See also U.S. Department of the Navy, Chief of Naval Operations, NWIP 10-2, *Law of Naval Warfare* (Sept. 1955, as amended July 1959), secs. 210, 211, 212, 213, and n.5; 1955 version printed in U.S. Naval War College, *International Law Studies, 1955* (1957) 363-364, 367-368.

The Prize Court of Hamburg declared:

". . . War creates rights and duties on the part of neutrals towards the belligerents which were outlined in Hague Conventions V and XII [*sic*] of 18 October, 1907, concerning the Rights and Duties of Neutral Powers in the case of Warfare on Land and Sea. . . . The state of war is an absolute, not a relative condition. It exists in relation to the belligerents and to all neutrals, no matter whether they have been notified or not."

The Wirpi (1941), [1943-1945] Ann. Dig. 300, 302 (No. 101).

As to Soviet views of the Hague Conventions, see Ginsburgs, "The Soviet Union, The Neutrals and International Law in World War II", 11 Int'l & Comp. L.Q. (1962) 171, 222. See also *ibid.* 226.

Nature of Neutral Duties

§ 6

Lauterpacht spelled out the duties of neutral States thus:

"International Law is primarily a law between States. For this reason the rights and duties of neutrality are principally those of neutral States as such. In the first instance, neutral States are bound by certain duties of abstention, *e.g.* in respect of loans and munitions to belligerents, which they are not bound to exact from their nationals. Secondly, neutral States are under a duty to prevent their territory from becoming a theatre of war as the result of passage of foreign troops or aircraft or of prolonged stay of belligerent men-of-war in their territorial waters. Thirdly, they are bound to control the activities of their nationals insofar as these may tend to transform neutral territory into a basis of war operations or preparations."

II Lauterpacht, *Oppenheim's International Law* (7th ed., 1952) 656.

Rousseau listed as the duties of a neutral State abstention and impartiality and as the rights of a neutral State the inviolability of its territory and freedom in its commercial relations.

Rousseau, *Droit International Public* (Paris, 1953) 672-673.

Castrén considered the question of neutrality of opinion, saying—

"3. In recent times reference has sometimes been made to a so-called neutrality of opinion, which *means* that neutral States would be bound to observe restraint and impartiality in their official pronouncements concerning belligerent States and, in addition, to exercise a certain degree of control over private

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for the purpose of such investigation, in this case, those means, although amply sufficient, were not in fact employed. . . ."

The British Government further declared:

". . . irrespective of the question whether the nature and object of the *Altmark*'s voyage through Norwegian territorial waters were permissible, the fact that the Norwegian authorities permitted, and indeed, went out of their way to facilitate, that voyage [by providing a naval escort] without making any proper enquiry into its nature and object constituted a definite failure on their part to comply with the obligations of neutrality. . . ."

Great Britain, Correspondence between His Majesty's Government in the United Kingdom and the Norwegian Government respecting the German Steamer "Altmark", Cmd. 8012, Norway, No. 1 (1950) 11, 12.

The United States Naval War College, *International Law Situations, 1939*, commented:

". . . Although the *Altmark* case deals with a neutral State's duties in regard to belligerent ships in territorial waters . . . it is of considerable general importance and involves interesting problems concerning jurisdiction over vessels, both public and private, within the territorial limits. The British government and some international lawyers charged that Norway had failed in its duties and that it should not have allowed the *Altmark* to transport prisoners along its coast. More careful examination of the situation, however, indicates that Norway had no obligation to halt the *Altmark*, to force it to leave, to intern it, or to release the prisoners [quoting Borchard, "Was Norway Delinquent in the Case of the *Altmark*?", 34 Am. J. Int'l L. (1940) 289, 292–294]." U.S. Naval War College, *International Law Situations, 1939* (1940) 14–15.

"The *Altmark* incident thus raised the general question as to what measures—if indeed any—of an investigative character a neutral is bound to take with respect to belligerent warships entering its waters. More specifically, does a neutral have a duty—as well as a right—to search a warship in circumstances raising reasonable doubt as to the legitimacy of the use to which neutral waters may be put. In the *Altmark* case Norway insisted that the peacetime immunity accorded foreign warships was equally applicable in time of war and that the *Altmark* was merely exercising this right of immunity when she turned down the Norwegian request to search the vessel. This position is hardly conducive to an effective neutrality, however, which would rather appear to require that an exception be made to the normal immunity granted foreign warships. Certainly there is much to be said for the view 'that a neutral state which has bona fide reasons for questioning a particular use of its waters by a belligerent warship has both the right and the duty to investigate the ship's activities, even to the extent of a reasonable inspection of the ship itself.' [Waldock, "The Release of the *Altmark*'s Prisoners," XXIV Br. Yb. Int'l L. (1947), p. 221.]"

Tucker, "The Law of War and Neutrality at Sea", U.S. Naval War College, *International Law Studies, 1955* (1957) 238, n.87.

For a concise discussion of the opinions of writers on the *Altmark* incident generally, see MacChesney, "International Law Situation", U.S. Naval War College, *International Law Situation and Documents, 1956* (1957) 8–10.

On the right of search in particular, MacChesney wrote: ". . . Both Borchard and Hyde . . . argued that there was no right to search a public ship such as the *Altmark*, except possibly to see if there was compliance with Norway's neutrality regulations (Borchard). Telders . . . on the other hand, argued that an auxiliary such as the *Altmark* was not immune from search. Assuming, *arguendo*, that there is normally immunity from search, the position of Waldock . . . that the neutral's duty to enforce its obligations under the Convention constitutes an exception to this immunity, is more consistent with the spirit of the Convention, and a more workable rule if neutrality is to be preserved. Lauterpacht's *Oppenheim* . . . concedes that Norway had no duty to search for the prisoners in order to release them, but argues that search would be relevant in determining whether the passage was 'innocent,' and therefore impliedly supports Waldock's position . . . ." *Ibid.* 21–22.

"A neutral State has the right, as well as the duty to prevent—even by force—the improper use of its territory, waters, or air space by belligerents. In relation to an offending belligerent, the exercise of such preventive measures must be considered a right of a neutral. . . ." U.S. Department of the Navy, Chief of Naval Operations, NWIP 10–2, *Law of Naval Warfare* (Sept. 1955, as amended July 1959), ch. 4, n.27; 1955 version printed in U.S. Naval War College, *International Law Studies, 1955* (1957) 391, n.21.

Repelling aerial intruders

On November 9, 1943, the United States protested to Spain that Spanish firing on American planes outside the territorial waters of the Canary Islands was "unneutral conduct" and requested "appropriate assurances that such unneutral acts" would not occur in the future. The Spanish Government replied that the planes were violating Spanish territorial waters.

The American Embassy in Spain to the Spanish Ministry for Foreign Affairs, note verbale, Nov. 9, 1943, MS. Department of State, file 740.0011 European War 1939/32055; the Spanish Ministry for Foreign Affairs to the American Embassy in Spain, note verbale, Nov. 15, 1943, *ibid.*/32128; 1943 For. Rel., vol. II, pp. 627–629. See further 1944 For. Rel., vol. IV, pp. 414–423.

For other actions by neutrals to prevent belligerent violation of neutral airspace, see Spaight. *Air Power and War Rights* (3d ed., 1947) 424–429.

Guggenheim said of the neutral's duty of prevention:

Neutral duty of prevention

"Neutral States are not only authorized to prevent, in the spatial domain of their juridical order, the commission of acts of war and of military operations, they are *obliged* to do so. Article 1 of the Fifth Hague Convention declares in effect that neutral territory is inviolable. This means that the neutral State ought to prevent its territory from becoming a theatre of operations or a base of operations against one of the belligerents."

II Guggenheim, *Traité de Droit international public* (Geneva, 1954) 520–521 (unofficial translation).

See also II Lauterpacht, *Oppenheim's International Law* (7th ed., 1952) 674–675.

Castrén stated:

"We have already seen that some of the rights of neutral States are such that they cannot be surrendered as this would entail favouring one belligerent at the expense of another. One of these rights is that of territorial integrity, understood in the widest meaning of the term to cover abstention from any kind of war operations on neutral territory. A neutral State is in this case bound to *exercise such control* of the situation as it can, and it may not willingly permit infringements of its neutrality. As this is a question of fulfilling a duty, measures taken for this purpose, even though they may involve the use of force, must not be regarded as hostile acts justifying war against the neutral State. (Articles 5 and 10 of the Hague Convention (V) concerning neutrality in land war, and Articles 25 and 26 of the Hague Convention (XIII) relating to neutrality in naval warfare.) It is uncertain whether, and how effectively, a neutral State must ensure that it has the necessary means available for preventing such infringements of neutrality, and how vigorously it must act in these cases. Too much must not be demanded of a neutral State, for it is entitled to examine the situation broadly from its own point of view (the economic strain created by the defence of its neutrality, the means available of preventing infringements, as well as its own security). While a mere protest may suffice in some instances, stronger measures have sometimes been demanded. If, however, a neutral State has neither the desire nor the power to interfere and the situation is serious, other belligerents may resort to self-help. In any case the *duty* of a neutral State to *ward off aggression*, as well as its duty to *punish* the offenders of the laws of neutrality, is limited to infringements of neutrality in its own territory. . . ."

Castrén, *The Present Law of War and Neutrality* (Helsinki, 1954) 442.

Belligerent Remedies for Breach of Neutrality

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"In general, the remedies for breach of neutrality, either by the neutral state or by a belligerent, consist in protest to the power concerned, demand for compensation, retaliatory action in the nature of reprisals and, in the ultimate resort, declaration of war. Since it is obvious that retaliatory action can easily develop into war, recourse should first be had to peaceful methods of resolving the dispute, such as those outlined in Article 33 of the United Nations Charter."

Greenspan, *The Modern Law of Land Warfare* (1959) 584.